

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

**SENTENCING MEMORANDUM AND MOTION FOR A VARIANCE FOR A  
NON-GUIDELINES SENTENCE**

The defendant, Shane Smith, comes before the Court for sentencing following his plea of guilty to a two count Information charging Possession of Ammunition by a Prohibited Person and Unlawful Possession of Short Barrel Rifles. Additionally, the defendant has admitted to violations in the supervised release petition in 15-CR-333. It is anticipated that defendant will be sentenced for both cases at the current sentencing hearing set for December 1, 2021. The violation is an “A” violation and constitutes a recommended sentencing guideline range of 18 to 24 months. There are no mandatory minimums and therefore, this Court has discretion to sentence within or below the guideline range. Further, the Court may order some or all of the supervised release sentence to run concurrently with the sentence in this case.

Defendant has no objections to the scoring in the presentence report.

## **Nature and Circumstances of the Offense**

Despite Shane's prior conviction for Possession of Firearms, he recently undertook to purchase, build and possess firearms and ammunition. As the Court is aware, he has in the past rhetoric professed by hate groups and anti-governmental who believe that possessing weapons is a right and necessary to protect what they perceive as a threat to their way of life. It is not without coincidence that the state of amount and severity of the rhetoric from organization in the months

leading up to Shane's arrest helped influence his actions. There is no question that possession of these firearms and accompanying ammunition is capable of producing great harm if actually utilized. Thankfully, in this case, Shane had no plans or intent to commit violence or further crimes beyond possessing these weapons. This time things are different. He immediately provided law enforcement with accurate information involving the weapons possessed, the location and acknowledging and accepting responsibility for possessing them. Regardless, he understands this was again, a violation of federal law and therefore, faces severe consequences for choosing to commit these crimes again.

### **History and Characteristics of the Defendant**

Shane began anti-social behavior as a young boy as witnessed from his juvenile records. He was difficult to control as a student and often faces disciplinary consequences. He had no positive influence from his father who is a multi-convicted felon and served several years in prison during Shane's formative years. He eventually died in 2005 as a result of a cocaine overdose. Although his mother remained in contact with him during his formative years, she was unable or unwilling to provide a home and raise Shane. Accordingly, he was raised by his maternal grandparents who provided for him the best they could. Interestingly, they provide insights since this final arrest. They believe that Shane has chosen a different path and rejects the agenda professed in the internet chat rooms and organizations he once believed. Now his grandfather has seen a remarkable change in Shane's beliefs and more importantly rejects the necessity for ever possessing firearms again.

The mental health evaluation conducted by Dr. John Myers in 2008 recaps quite precisely beginning at age nine, how Shane's mental health issues effected his behavior and was at the root of his social developmental issues. No doubt that the instability in his home life caused issues of

anger which affected his behavior at school. He was also diagnosed with Attention Deficit, Hyperactivity Disorder and Oppositional Defiant Disorder. Dr. Myers quotes “the boy rejects the authority of most people. He has very limited capacity to anticipate the consequences of his choices. His own inherent developmental problems, i.e., the ADHD, predisposes him to rash decision making and impulsivity.” This diagnosis mirrors his activity in the present case exactly. While being exposed to online rhetoric involving hate, weapons and even taking arms against the government, he made the poor choices and impulsively chose to build and possess weapons.

Mr. Shane has been on psychotropic medications since early 2017 for treatment of depression, obsessive-compulsive disorder, panic disorder, anxiety disorders and post-traumatic stress disorder. Shane continued treatment as required by the NYS Parole and U. S. Probation beginning in the summer of 2019. He willingly participated in counseling sessions twice per month and found them to be beneficial. However, with the onset of COVID-19 these in person counseling sessions were terminated and were conducted via the internet. Arguably, decreasing the effectiveness of counseling causing him to make poor choices.

Shane Smith is still only 24-years-old. We can be optimistic that this time things will be different. He immediately provided law enforcement with accurate information involving the weapons possessed, the location and acknowledging and accepting responsibility for possessing them. He acknowledges and is looking forward to a future away from the groups he once participated in and firearms and towards making a living as a small engine mechanic. He clearly has mechanical skills. He also enjoys the support of his grandparents and his mother. His grandparents are aging and need his assistance around their home.

Accordingly, counsel seeks a variance from the current sentencing guideline range and that the Court sentence him to a term to run concurrently with a sentence for his violation of Supervised Release, **15-CR-333**, for the same conduct that supports the conviction in this case, **21-CR-117**.

Dated: November 10, 2021

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